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| **STATE OF NORTH CAROLINA** | **IN THE SUPERIOR COURT** |
| **POLK COUNTY** | **CIVIL DIVISION** |
| | **07-CVS-** 131 |

**C. Burgess,** ]

**Plaintiff** ]

]

**vs.** ] **CIVIL COMPLAINT**

] **-JURY TRIAL DEMANDED-**

**Eforce Media, Inc.,; IWizard Holding** ]
**Inc.,; Adknowledge, Inc.,; Baseball** ]
**Express, Inc.,; Allen-Edmonds Shoe** ]
**Corporation, ; Intersearch Group, Inc.,;** ]
**Trusco Manufacturing Company, ;** ]
**Pricegrabber.com, Inc.,; Shopzilla, Inc.;** ]
**Dazadi, Inc.,; Six Three Zero** ]
**Enterprises, LLC,** ]
**Defendants** ]

______________________________________]

**Now comes the Plaintiff, pro se, and alleges and says:**

Dockets.Justia.com

## PLAINTIFF

1. That C. Burgess is a citizen and resident of North Carolina and is hereafter referred to as the Plaintiff.

## DEFENDANTS

2. That Six Three Zero Enterprises, LLC, is a limited liability corporation under the laws of California and is doing business in North Carolina via the Internet and has established minimum contacts with this state and is hereafter referred to as Six or Defendants.
3. That Dazadi, Inc., is a California corporation doing business in North Carolina via the Internet and has established minimum contacts with this state and is hereafter referred to as Dazadi or Defendants.
4. That Intersearch Group, Inc., is a Delaware corporation doing business in North Carolina via the Internet and has established minimum contacts with this state and is hereafter referred to as Intersearch or Defendants.
5. That Shopzilla, Inc., is a Ohio corporation, using a California registration and does business in North Carolina via the Internet and has established minimum contacts with this state and is hereafter refereed to as Shop or Defendants.
6. That Pricegrabber.com, Inc. is a California corporation doing business in North Carolina via the Internet and has established minimum contacts with this state and is hereafter referred to as Price or Defendants.
7. That Trusco Manufacturing Company is a Florida corporation doing business in North Carolina via the Internet and has established minimum contacts with this state and is hereafter referred to as Trusco or Defendants.

8. That Allen-Edmonds Shoe Corporation is a Wisconsin corporation doing business in North Carolina via the Internet and has established minimum contacts with the state of North Carolina and is hereafter referred to as Allen or Defendants.

9. That Baseball Express, Inc., is a corporation licensed in the state of Texas, is doing business in North Carolina via the Internet and has established minimum contacts with North Carolina and is hereafter referred to as Baseball or Defendants.

10. That Eforce Media, Inc., is a California corporation doing business in North Carolina via the Internet and has established minimum contacts with the state of North Carolina and is hereafter referred to as Eforce or Defendants.

11. That Iwizard Holdings, Inc., is an Arizona corporation doing business in North Carolina via the Internet and has established minimum contacts with the state of North Carolina and is hereafter referred to as Iwizard or Defendants.

12. That Adknowledge, Inc., is a Missouri corporation doing business in North Carolina via the Internet and has established minimum contacts with the state of North Carolina and is hereafter referred to as AD or Defendants.

## STATEMENT OF FACTS

13. That the Plaintiff owns his own computer and it is not public property nor in the public domain.

14. That the Plaintiff pays for his access to the Internet and as such that access is his and his alone and is not in the public domain nor is it public property.

15. That the Plaintiff's personal computer is in fact his personal property and he has a privacy right in the use of his computer.

16. That the Plaintiff's computer was paid for by the Plaintiff and as such is his personal property.

17. That the Can-Spam Act, passed by Congress in 2003, is applicable to the state courts as well as the federal courts.

18. That at all times mentioned in this complaint, the Defendants, individually knew or should have known the facts stated herein.

COUNT ONE

AGAINST DEFENDANTS: IWIZARD, EFORCE, BASEBALL AND ADKNOWLEDGE

STATEMENT OF FACTS

19. That this group of Defendants has repeatedly sent to the Plaintiff emails in violation of the Can-Spam Act of 2003, emails that promote their various financial interest. That the Plaintiff has repeatedly attempted to have his email address removed from their mailings, all without success.

20. That the emails were not solicited, not agreed upon and were not welcome.

21. That the Defendants would, in some cases, sell the email address of the Plaintiff to others which prevented the Plaintiff from ever being able to remove the unwanted emails.

22. That the excessive emails have slowed down the operation of the Plaintiff's computer and damaged same.

23. That the Plaintiff has suffered loss of time and productivity in having to constantly remove the emails sent to him by the Defendants named herein in Count One.

24. That the Defendants have invaded the privacy of the Plaintiff by constantly sending unsolicited emails.

25. That the Defendants have failed to obey the mandates of the Can-Spam act by stopping within ten days unsolicited emails once notified.

26. That the Defendants have intentionally violated the Can-Spam Act and the privacy rights of the Plaintiff in addition to damaging his computer.

## STATEMENT OF CLAIM

27. That paragraphs nineteen through twenty six are incorporated herein by reference.

28. That the Defendants have violated the privacy of the Plaintiff in an intentional and unlawful manner.

29. That the Defendants have damaged the personal property of the Plaintiff in an intentional and unlawful manner.

30. That the Defendants have violated the Can-Spam Act of 2003 in an intentional and unlawful manner, in order to further their own financial gain.

## RELIEF DEMANDED

31. That paragraphs twenty seven through thirty are incorporated herein by reference.

32. That the Plaintiff have and recover from each Defendant for each unlawful email sent, the maximum amount allowed by statute under the Can-Spam Act.

33. That the Plaintiff have and recover from each Defendant the sum of one thousand five hundred dollars for damage to his computer.

34. That the Plaintiff have and recover from each Defendant a sum in excess of ten thousand dollars for invading the privacy of the Plaintiff.

35. That the Plaintiff have a trial by jury.

36. That the cost of this action be taxed against the Defendants.

## COUNT TWO

## AGAINST DEFENDANTS:

## ALLEN-EDMONDS SHOE CORPORATION; INTERSEARCH GROUP, INC.; TRUSCO MANUFACTURING COMPANY; PRICEGRABBER.COM, INC.; SHOPZILLA, INC; DAZADI, INC.; SIX THREE ZERO ENTERPRISES, LLC

## STATEMENT OF FACTS

37. That paragraphs 13-16 are incorporated herein by reference.

38. That the Defendants, through nefarious means, did cause a worm or virus to be placed on the computer of the Plaintiff in order to facilitate the Defendants being able to control where the Plaintiff's browser would go when using Google

or any type search engine, other than theirs. This worm or virus is unknown and undetectable by the Plaintiff. The virus or worm was placed there illegally, without the consent or knowledge of the Plaintiff and when it was in fact placed there, constituted a trespass upon the computer of the Plaintiff and an invasion of privacy of the Plaintiff. Further, said actions are illegal in nature.

39. That the virus or worm placed on the Plaintiff's computer, without his knowledge or consent, has damaged his Internet Browser to the point of the Browser being non functional.

40. That the virus or worm placed by the Defendants is a brilliant scientific design as it evades detection by legitimate Virus Detection devices and worm blockers, yet is illegal.

41. That the virus or worm works like this: a. The Plaintiff will type in a search word on his Google tool bar. He will then click on the first site shown by Google or any site shown by Google and instead of going to that site is redirected or "Jumps" to a site promoted by the Defendants. Thereafter, the Plaintiff cannot even copy and paste the site he wants into his Internet Explorer address bar as the Defendants worm or virus blocks him from doing so. When the Plaintiff attempts to click on a non commercial site, the Browser shows that there is no access to the Internet. By design, the Plaintiff has no other choice than to view the ads of the Defendants.

42. That the Defendants named herein either promote the entry of the virus or worm to the computer of the Plaintiff, or benefit from same. The Defendants which benefit from the introduction of the virus know or should know, that the

actions of certain Defendants is illegal and that the ad rates they are paying for the service of getting hits from the Plaintiff, are so far below market value as to tip them off that the actions in placing the worm and virus are in fact illegal.

43. That the Defendants have caused the Plaintiff personal damage to his property and invaded his privacy in order to secure very low advertising rates and have done this in violation of the laws of North Carolina.

## STATEMENT OF CLAIM

44. That paragraphs 37-43 are incorporated herein by reference.
45. That the Defendants have damaged the personal property of the Plaintiff.
46. That the Defendants have violated the privacy rights of the Plaintiff.
47. That the Defendants have illegally entered the property of the Plaintiff to his detriment.
48. That the Plaintiff has suffered loss of money, time and aggravation because of the actions of the Defendants.
49. That the Plaintiff has the actions described herein memorialized on a digital CD.

## RELIEF DEMANDED

50. That paragraphs forty four through forty nine are incorporated herein by reference.

51. That the Plaintiff have and recover from each Defendant an amount in excess of ten thousand dollars for invading the privacy of the Plaintiff in punitive damages.

52. That the Plaintiff have and recover from each Defendant an amount in excess of ten thousand dollars for damaging the computer of the Plaintiff, in punitive damages.

53. That the Plaintiff have and recover from each Defendant the sum of one thousand five hundred dollars in actual damages for damaging the computer of the Plaintiff.

54. That the Plaintiff have a trial by jury.

55. That the cost of this action be paid by the Defendants.

56. For any other relief the Court may deem just and proper.

Respectfully submitted this the 22nd of May, 2007.

C. Burgess

POB 6355

Hendersonville, NC 28793

Nossell1234@mchsi.com

828-595-4290

**STATE OF NORTH CAROLINA**

POLK County

File No. 07-CVS-131

In The General Court Of Justice
☐ District ☒ Superior Court Division

Name Of Plaintiff
C. Burgess

Address
POB 6355

City, State, Zip
Hendersonville, NC 28793

VERSUS

Name Of Defendant(s)
Eforce Media, Inc., et als

# CIVIL SUMMONS

☐ ALIAS AND PLURIES SUMMONS

G.S. 1A-1, Rules 3, 4

Date Original Summons Issued
[redacted]

Date(s) Subsequent Summons(es) Issued

**To Each Of The Defendant(s) Named Below:**

Name And Address Of Defendant 1
Eforce Media, Inc.
National Registered Agents, Inc., Registered Agent
2030 Main Street, Ste 1030
Irvine, California 92614

Name And Address Of Defendant 2
Iwizard Holding, Inc.
James Piccolo, Registered Agent
7077 E. Marilyn Rd, #130
Scottsdale, Arizona 85254

**A Civil Action Has Been Commenced Against You!**

You are notified to appear and answer the complaint of the plaintiff as follows:

1. Serve a copy of your written answer to the complaint upon the plaintiff or plaintiff's attorney within thirty (30) days after you have been served. You may serve your answer by delivering a copy to the plaintiff or by mailing it to the plaintiff's last known address, and

2. File the original of the written answer with the Clerk of Superior Court of the county named above.

If you fail to answer the complaint, the plaintiff will apply to the Court for the relief demanded in the complaint.

Name And Address Of Plaintiff's Attorney (If None, Address Of Plaintiff)
C. Burgess, Pro Se
POB 6355
Hendersonville, NC 28793
828-595-4290
[illegible]11234@mchsi.com

Date Issued: 5-22-07
Time: 11:10 ☒ AM ☐ PM
Signature
☒ Deputy CSC ☐ Assistant CSC ☐ Clerk Of Superior Court

☐ ENDORSEMENT
This Summons was originally issued on the date indicated above and returned not served. At the request of the plaintiff, the time within which this Summons must be served is extended sixty (60) days.

Date Of Endorsement
Time ☐ AM ☐ PM
Signature
☐ Deputy CSC ☐ Assistant CSC ☐ Clerk Of Superior Court

**NOTE TO PARTIES:** *Many counties have* ***MANDATORY ARBITRATION*** *programs in which most cases where the amount in controversy is $15,000 or less are heard by an arbitrator before a trial. The parties will be notified if this case is assigned for mandatory arbitration, and, if so, what procedure is to be followed.*

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| | |
|---|---|
| **STATE OF NORTH CAROLINA**<br><br>POLK County | *File No.*<br>07-CVS-131<br><br>In The General Court Of Justice<br>☐ District ☒ Superior Court Division |
| *Name Of Plaintiff*<br>C. Burgess<br>*Address*<br>POB 6355<br>*City, State, Zip*<br>Hendersonville, NC 28793<br>**VERSUS**<br>*Name Of Defendant(s)*<br>Eforce Media, Inc., et als | **CIVIL SUMMONS**<br>☐ **ALIAS AND PLURIES SUMMONS**<br>G.S. 1A-1, Rules 3, 4<br>*Date Original Summons Issued*<br>[illegible]<br>*Date(s) Subsequent Summons(es) Issued* |

**To Each Of The Defendant(s) Named Below:**

| *Name And Address Of Defendant 1* | *Name And Address Of Defendant 2* |
|---|---|
| Adknowledge, Inc.<br>CT Corporation System, Registered Agent<br>120 South Central Avenue<br>Clayton, MO 63105 | |

**A Civil Action Has Been Commenced Against You!**

You are notified to appear and answer the complaint of the plaintiff as follows:

1. Serve a copy of your written answer to the complaint upon the plaintiff or plaintiff's attorney within thirty (30) days after you have been served. You may serve your answer by delivering a copy to the plaintiff or by mailing it to the plaintiff's last known address, and

2. File the original of the written answer with the Clerk of Superior Court of the county named above.

If you fail to answer the complaint, the plaintiff will apply to the Court for the relief demanded in the complaint.

| *Name And Address Of Plaintiff's Attorney (If None, Address Of Plaintiff)* | |
|---|---|
| C. Burgess, Pro Se<br>POB 6355<br>Hendersonville, NC 28793<br>828-595-4290 | *Date Issued* 5-22-07 *Time* 11:10 ☒ AM ☐ PM<br>*Signature* [signature]<br>☒ *Deputy CSC* ☐ *Assistant CSC* ☐ *Clerk Of Superior Court* |

| | |
|---|---|
| ☐ ENDORSEMENT<br>This Summons was originally issued on the date indicated above and returned not served. At the request of the plaintiff, the time within which this Summons must be served is extended sixty (60) days. | *Date Of Endorsement* *Time* ☐ AM ☐ PM<br>*Signature*<br>☐ *Deputy CSC* ☐ *Assistant CSC* ☐ *Clerk Of Superior Court* |

**NOTE TO PARTIES:** *Many counties have **MANDATORY ARBITRATION** programs in which most cases where the amount in controversy is $15,000 or less are heard by an arbitrator before a trial. The parties will be notified if this case is assigned for mandatory arbitration, and, if so, what procedure is to be followed.*

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# STATE OF NORTH CAROLINA

POLK County

File No. 07-CVS-131

In The General Court Of Justice
☐ District ☒ Superior Court Division

*Name Of Plaintiff*
C. Burgess

*Address*
POB 6355

*City, State, Zip*
Hendersonville, NC 28793

**VERSUS**

*Name Of Defendant(s)*
Eforce Media, Inc., et als

## CIVIL SUMMONS

☐ **ALIAS AND PLURIES SUMMONS**

G.S. 1A-1, Rules 3, 4

*Date Original Summons Issued*
~~05-[illegible]~~

*Date(s) Subsequent Summons(es) Issued*

**To Each Of The Defendant(s) Named Below:**

*Name And Address Of Defendant 1*
Baseball Express, Inc.
Patrick M. Cowles, Registered Agent
1051 E. Nakoma
San Antonio, TX 78216

*Name And Address Of Defendant 2*
Six Three Zero Enterprises, LLC
Michael Turack, Registered Agent
20938 Normandie Avenue
Torrance, CA 90502

**A Civil Action Has Been Commenced Against You!**

You are notified to appear and answer the complaint of the plaintiff as follows:

1. Serve a copy of your written answer to the complaint upon the plaintiff or plaintiff's attorney within thirty (30) days after you have been served. You may serve your answer by delivering a copy to the plaintiff or by mailing it to the plaintiff's last known address, and

2. File the original of the written answer with the Clerk of Superior Court of the county named above.

If you fail to answer the complaint, the plaintiff will apply to the Court for the relief demanded in the complaint.

*Name And Address Of Plaintiff's Attorney (If None, Address Of Plaintiff)*
C. Burgess, Pro Se
POB 6355
Hendersonville, NC 28793
828-595-4290

*Date Issued* 5-22-07 *Time* 11:10 ☒ AM ☐ PM

*Signature* [signature]

☒ Deputy CSC ☐ Assistant CSC ☐ Clerk Of Superior Court

☐ ENDORSEMENT
This Summons was originally issued on the date indicated above and returned not served. At the request of the plaintiff, the time within which this Summons must be served is extended sixty (60) days.

*Date Of Endorsement* *Time* ☐ AM ☐ PM

*Signature*

☐ Deputy CSC ☐ Assistant CSC ☐ Clerk Of Superior Court

**NOTE TO PARTIES:** *Many counties have **MANDATORY ARBITRATION** programs in which most cases where the amount in controversy is $15,000 or less are heard by an arbitrator before a trial. The parties will be notified if this case is assigned for mandatory arbitration, and, if so, what procedure is to be followed.*

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## STATE OF NORTH CAROLINA

POLK County

File No. 07-CVS-131

In The General Court Of Justice
☐ District ☒ Superior Court Division

Name Of Plaintiff
C. Burgess

Address
POB 6355

City, State, Zip
Hendersonville, NC 28793

**VERSUS**

Name Of Defendant(s)
Eforce Media, Inc., et als

## CIVIL SUMMONS

☐ **ALIAS AND PLURIES SUMMONS**

G.S. 1A-1, Rules 3, 4

Date Original Summons Issued
~~[illegible]~~

Date(s) Subsequent Summons(es) Issued

**To Each Of The Defendant(s) Named Below:**

| Name And Address Of Defendant 1 | Name And Address Of Defendant 2 |
|---|---|
| Shopzilla, Inc.<br>CT Corporation System, Registered Agent<br>818 West Seventh Street<br>Los Angeles, CA 90017 | PriceGrabber.com, Inc.<br>CT Corporation System, Registered Agent<br>818 West Seventh Street<br>Los Angeles, CA 90017 |

**A Civil Action Has Been Commenced Against You!**

You are notified to appear and answer the complaint of the plaintiff as follows:

1. Serve a copy of your written answer to the complaint upon the plaintiff or plaintiff's attorney within thirty (30) days after you have been served. You may serve your answer by delivering a copy to the plaintiff or by mailing it to the plaintiff's last known address, and

2. File the original of the written answer with the Clerk of Superior Court of the county named above.

If you fail to answer the complaint, the plaintiff will apply to the Court for the relief demanded in the complaint.

Name And Address Of Plaintiff's Attorney (If None, Address Of Plaintiff)
C. Burgess, Pro Se
POB 6355
Hendersonville, NC 28793
828-595-4290

Date Issued: 5-22-07
Time: 11:10 ☒ AM ☐ PM
Signature: [signature]
☒ Deputy CSC ☐ Assistant CSC ☐ Clerk Of Superior Court

☐ ENDORSEMENT
This Summons was originally issued on the date indicated above and returned not served. At the request of the plaintiff, the time within which this Summons must be served is extended sixty (60) days.

Date Of Endorsement
Time ☐ AM ☐ PM
Signature
☐ Deputy CSC ☐ Assistant CSC ☐ Clerk Of Superior Court

**NOTE TO PARTIES:** *Many counties have **MANDATORY ARBITRATION** programs in which most cases where the amount in controversy is $15,000 or less are heard by an arbitrator before a trial. The parties will be notified if this case is assigned for mandatory arbitration, and, if so, what procedure is to be followed.*

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# STATE OF NORTH CAROLINA

POLK County

File No. 07-

In The General Court Of Justice
☐ District ☒ Superior Court Division

Name Of Plaintiff
C. Burgess
Address
POB 6355
City, State, Zip
Hendersonville, NC 28793

VERSUS

Name Of Defendant(s)
Eforce Media, Inc., et als

## CIVIL SUMMONS

☐ ALIAS AND PLURIES SUMMONS

G.S. 1A-1, Rules

Date Original Summons Issued
~~06-02-2007~~

Date(s) Subsequent Summons(es) Issued

**To Each Of The Defendant(s) Named Below:**

| Name And Address Of Defendant 1 | Name And Address Of Defendant 2 |
|---|---|
| Dazadi, Inc.<br>Jason Robert Boyce, Registered Agent<br>20134 Leadwell St., #373<br>Winnetka, CA 91306 | Intersearch Group, Inc.<br>Corporate Service Bureau, Inc., Registered Agent<br>3500 South Dupont Highway<br>Dover, DE 19901 |

**A Civil Action Has Been Commenced Against You!**

You are notified to appear and answer the complaint of the plaintiff as follows:

1. Serve a copy of your written answer to the complaint upon the plaintiff or plaintiff's attorney within thirty (30) days after you have been served. You may serve your answer by delivering a copy to the plaintiff or by mailing it to the plaintiff's last known address, and

2. File the original of the written answer with the Clerk of Superior Court of the county named above.

If you fail to answer the complaint, the plaintiff will apply to the Court for the relief demanded in the complaint.

Name And Address Of Plaintiff's Attorney (If None, Address Of Plaintiff)
C. Burgess, Pro Se
POB 6355
Hendersonville, NC 28793
828-595-4290

Date Issued: 5-22-07
Time: 11:10 ☒ AM ☐ PM
Signature: [signature]
☒ Deputy CSC ☐ Assistant CSC ☐ Clerk Of Superior Court

☐ ENDORSEMENT
This Summons was originally issued on the date indicated above and returned not served. At the request of the plaintiff, the time within which this Summons must be served is extended sixty (60) days.

Date Of Endorsement
Time ☐ AM ☐ PM
Signature
☐ Deputy CSC ☐ Assistant CSC ☐ Clerk Of Superior Court

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# STATE OF NORTH CAROLINA

POLK County

File No. 07-CVS-131

In The General Court Of Justice
☐ District ☒ Superior Court Division

Name Of Plaintiff
C. Burgess

Address
POB 6355

City, State, Zip
Hendersonville, NC 28793

VERSUS

Name Of Defendant(s)
Eforce Media, Inc., et als

## CIVIL SUMMONS

☐ ALIAS AND PLURIES SUMMONS

G.S. 1A-1, Rules 3, 4

Date Original Summons Issued
~~[illegible]~~

Date(s) Subsequent Summons(es) Issued

**To Each Of The Defendant(s) Named Below:**

Name And Address Of Defendant 1
Trusco Manufacturing Company
Bradley S. Harris, Registered Agent
3959 NW 95th Avenue Road
Ocala, Florida 34482

Name And Address Of Defendant 2
Allen-Edmonds Shoe Corporation
Jay P. Schauer, Registered Agent
201 E. Seven Hills Road
Port Washington, WI 53074

**A Civil Action Has Been Commenced Against You!**

You are notified to appear and answer the complaint of the plaintiff as follows:

1. Serve a copy of your written answer to the complaint upon the plaintiff or plaintiff's attorney within thirty (30) days after you have been served. You may serve your answer by delivering a copy to the plaintiff or by mailing it to the plaintiff's last known address, and
2. File the original of the written answer with the Clerk of Superior Court of the county named above.

If you fail to answer the complaint, the plaintiff will apply to the Court for the relief demanded in the complaint.

Name And Address Of Plaintiff's Attorney (If None, Address Of Plaintiff)
C. Burgess, Pro Se
POB 6355
Hendersonville, NC 28793
828-595-4290

Date Issued: 5-22-07
Time: 11:10 ☒ AM ☐ PM

Signature: [signature]

☒ Deputy CSC ☐ Assistant CSC ☐ Clerk Of Superior Court

☐ ENDORSEMENT
This Summons was originally issued on the date indicated above and returned not served. At the request of the plaintiff, the time within which this Summons must be served is extended sixty (60) days.

Date Of Endorsement

Time ☐ AM ☐ PM

Signature

☐ Deputy CSC ☐ Assistant CSC ☐ Clerk Of Superior Court

**NOTE TO PARTIES:** *Many counties have **MANDATORY ARBITRATION** programs in which most cases where the amount in controversy is $15,000 or less are heard by an arbitrator before a trial. The parties will be notified if this case is assigned for mandatory arbitration, and, if so, what procedure is to be followed.*

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